



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

D. M. Sugimura, Director

Interpretation of the Director Under Seattle Municipal Code Title 23

Regarding the Use of the

Property at

7201 Beacon Avenue South

(Van Asselt Elementary School)

DPD Interpretation No. 09-003-I

(Project No. 3010278)

Background

This interpretation was requested on behalf of the Seattle Public Schools, to clarify procedural requirements for occupying a former school in a residential zone with other uses. Similar interpretations have been concurrently requested with respect to seven other school sites in single family and multifamily zones. In particular, the question raised is whether the School Use Advisory Committee ("SUAC") process, described in Chapter 23.78 of the Seattle Land Use Code, is required in order to occupy the building with another use generally listed as permitted outright in the zone, or specifically listed as a use permitted in a former school.

Findings of Fact

1. The Van Asselt Elementary School is a K - 5 school located at 7201 Beacon Avenue South in the Holly Park area, in an SF 5000 (Single family Residential) zone. It is on an approximately 8.5-acre property at the southwest corner of Beacon Avenue South and South Myrtle Street, just east of the I-5 corridor. The school building was built in 1950. Surrounding properties to the north and south are predominantly developed with single-family homes. A park, the Van Asselt Playground, is across Beacon Avenue South, along with a few commercial businesses in a small, commercially-zoned strip. Two churches, also in the SF 5000 zone, are located nearby to the south along Beacon Avenue: The Beacon Avenue Church of God is adjacent to the school site, at 7225 Beacon Avenue South, and the Beacon United Methodist Church at 7301 Beacon Avenue South, is half a block away, and about 235 feet from the school site at the nearest point.

2. Principal uses permitted outright in Single Family zones are listed at Section 23.44.006:

The following principal uses are permitted outright in single-family zones:

A. Single-family Dwelling Unit. One single-family dwelling unit per lot, except that an accessory dwelling unit may also be approved pursuant to Section 23.44.041, and except as approved as part of an administrative conditional use permit under Section 25.09.260;

B. Floating Homes. Floating homes, subject to the requirements of Chapter 23.60;

C. Parks and open space, including customary buildings and activities, provided that garages and service or storage areas accessory to parks are located one hundred (100) feet or more from any other lot in a residential zone and are obscured from view from each such lot;

D. Existing railroad right-of-way;

E. Public Schools Meeting Development Standards. In all single-family zones, new public schools or additions to existing public schools, and accessory uses including child care centers, subject to the special development standards and departures from standards contained in Section 23.44.017, except that departures from development standards may be permitted or required pursuant to procedures and criteria established in Chapter 23.79, Development Standard Departure for Public Schools;

F. Uses in existing or former public schools:

1. Child care centers, public or private schools, educational and vocational training for the disabled, adult evening education classes, nonprofit libraries, community centers, community programs for the elderly or similar uses, in each case in existing or former public schools.
2. Other non-school uses in existing or former public schools, if permitted pursuant to procedures established in Chapter 23.78, The Establishment of Criteria for Joint Use or Reuse of Schools.
3. Additions to existing public schools only when the proposed use of the addition is a public school;

G. Nursing Homes. Nursing homes meeting the development standards of this chapter, and limited to eight (8) or fewer residents;

H. Adult Family Homes. Adult family homes, as defined and licensed by the state of Washington.

3. The uses listed in Section 23.44.006 F 1, above, are all regulated as institutional uses under the Land Use Code. These uses are defined at Section 23.84A.018. Most institutional uses are permitted as administrative conditional uses in Single Family zones. General provisions relating to institutions in Single Family zones, including dispersion standards, are found at SMC Section 23.44.022. This section is a part of Subchapter II of the Single Family Chapter, which governs conditional uses. These definitions and standards are incorporated by reference as findings of fact.

4. Subchapter I of the Single Family Chapter, which is comprised of Sections 23.44.006 through 23.44.017, regulates principal uses permitted outright in Single Family zones. Section 23.44.008 A provides, “The development standards set out in this subchapter apply to principal and accessory uses permitted outright in single-family zones.”
5. A provision allowing a landmark structure to be converted to a use not otherwise permitted in a Single Family zone is found at Section 23.44.026. Code provisions regulating the School Use Advisory Committee (“SUAC”) process are found in Chapter 23.78. These sections are incorporated by reference as Findings of Fact.
6. Two adopted Comprehensive Plan policies relate to re-use of public school properties:

LU23 In order to encourage future school use of public school buildings that are no longer used as schools allow non-residential uses not otherwise permitted in the area to locate in school buildings as long as specific criteria for each such re-use are met.

LU24 Determine criteria for judging the acceptability of proposed uses of school buildings for each school, which may differ from school to school. Address through the criteria the effects of the uses on students, teachers and residents of the surrounding area, and traffic, parking and other land use impacts. Determine the specific criteria for each school through a process that ensures the participation of the Seattle School District, the City, and the neighborhood involved.
7. Chapter 23.78, including provisions for the SUAC process, was a part of the original installment of Title 23, adopted in 1982 by Ordinance No. 110381.
8. In 1985, an application (Project No. 8500790/Permit No. 622924) was submitted to convert the former Queen Ann High School at 201 Galer Street to residential units. Most of the site is in an L2 (Lowrise-2) multifamily residential zone, with one corner of the property in an SF 5000 (Single Family 5000) zone. No SUAC was convened. The development was permitted through an administrative conditional use, pursuant to a provision allowing uses not otherwise permitted in the zone in landmark structures.

Conclusions

1. It is clear, under Section 23.44.006 F 2, that the SUAC process may be applied to authorize certain uses in existing or former public school buildings. The question raised is whether this is the exclusive process for authorizing non-school uses in existing or former schools.
2. Section 23.44.006 F 1 lists a number of institutional uses as permitted in existing or former schools. In a Single Family zone, these institutional uses would normally require administrative conditional use approval. The inclusion under Section 23.44.006, which lists uses permitted outright, clearly shows that the listed institutional uses may be allowed without a conditional use approval in cases where the building is an existing or former public school. Section 23.44.006 F 1 does not state that the SUAC process is required to authorize such uses. By contrast, the following paragraph, Section 23.44.006 F 2 says “**other**” non-school uses may be permitted pursuant to the procedures in Chapter 23.78 (i.e. the SUAC process). At the least, this must be seen as differentiating uses subject to the SUAC process from the institutional ones in the immediately preceding list. We conclude that the institutional uses listed in Section 23.44.006 F 1 are permitted outright in an existing or former public school, and require neither an administrative conditional use approval nor the SUAC process. If the intent had been to

require the SUAC process for the listed institutional uses, there would have been no point in specifically listing those uses in Section 23.44.006 F 1, as they would be no different from any other use covered under Section 23.44.006 F 2.

3. A related question is whether the development standards which would normally apply to institutional uses, such as the dispersion requirement, must be considered when an existing or former school is converted to another institutional use pursuant to Section 23.44.006 F 1. These standards are found in Section 23.44.022, which is a part of Subchapter II of the Single Family Chapter of the Land Use Code, which contains regulations for principal conditional uses. However, an institutional use authorized pursuant to Section 23.44.006 F 1 is a use permitted outright, and thus specifically subject to the development standards of Subchapter I, according to Section 23.44.008 A. Additional standards such as the dispersion requirement, provided in Section 23.44.022, would not apply. To the extent that an existing or former public school building is not consistent with the current standards for uses permitted outright in the zone, it would be considered legally nonconforming with respect to that standard. Conversion to a permitted institutional use pursuant to Section 23.44.006 F 1 would not change that nonconformity, so no variance or other special review would be required in order for the nonconformity to continue. (The Code parking requirement for the new use would need to be determined according to the usual process for determining parking requirements when the use of a building changes.) This reading, providing flexibility for conversion of unneeded school structures to other institutional uses, is supported by the language of the code and is consistent with the policy language supporting preservation of existing public school buildings for potential return to school use, if needed in the future.
4. A separate question is whether the SUAC process would be required to convert a public school to a use normally permitted outright in a Single Family zone, under a different subsection of Section 23.44.006, such as a single-family house. This question may be academic, as a school building typically would not be well-suited for the other uses listed as permitted under this section. However, the language in the other subsections of Section 23.44.006, permitting specific uses, does not include any express limitations for cases where the use is proposed in an existing or former school building. Likewise, Section 23.44.006 F 2 does not expressly limit the operation of other subsections, for example by saying “Other non-school uses in existing or former public schools, **ONLY** if permitted pursuant to procedures established in Chapter 23.78....” We conclude, therefore, that the SUAC process is not necessary in order to convert an existing or former public school to another use permitted outright in a Single Family zone.
5. As reflected in Comprehensive Plan Policy LU23, the purpose of the SUAC process is to encourage future school use of public school buildings, which would start with preserving the buildings. The process would provide flexibility by “allow[ing] non-residential uses *not otherwise permitted*” subject to specific criteria. This also reflects an intent that the purpose of the process is to provide a means for allowing uses not otherwise permitted, and that the process is not necessary or intended for authorizing uses that *are* otherwise permitted. We conclude that the SUAC process is not required for conversion of an existing or former school structure to a use that is among those listed as permitted outright under Paragraphs A through E, or G or H of Section 23.44.006.

6. A further question is whether the SUAC process is the exclusive process for allowing a school building to be converted to a use not normally permitted in the zone. The chapter describing the SUAC process, SMC Chapter 23.78, does not say that it is the sole process for establishing non-school use in an existing or former public school structure. Instead, it is written permissively: “The Seattle School District or other owner of a public school structure **may** apply for the establishment of criteria for non-school use....” The Single Family Chapter, in particular, allows landmark structures to be converted to uses not otherwise permitted in the zone through an administrative conditional use process. Former schools are not expressly excluded from eligibility under this section. We conclude that this process is available, in lieu of the SUAC process, for a qualifying building.
7. The reading that the SUAC process is not the exclusive process for establishing non-school uses in former schools is consistent with the City’s past practices: In 1985, the former Queen Anne High School building, partially in a Single Family zone, was converted to multifamily residential use. Although the SUAC process had been established at that time, it was not deemed necessary to apply that process in order to allow the conversion. Instead, pursuant to another code provision, an administrative conditional use approval was obtained allowing the use not otherwise permitted in the zone on the basis of the landmark status of the structure.

Decision

The Van Asselt Elementary School at 7201 Beacon Avenue South may be converted to any of the following institutional uses, regardless of conformity with institutional development standards, without going through the SUAC process: Child care centers, public or private schools, educational and vocational training for the disabled, adult evening education classes, nonprofit libraries, community centers, community programs for the elderly or similar uses. The building also may be converted to any other use permitted outright in the SF 5000 zone, as listed at Seattle Municipal Code Section 23.44.006, without going through the SUAC process.

Entered this 28 day of December, 2009.

(signature on file)

Andrew S. McKim

Land Use Planner – Supervisor